

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of:)
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Implementation of the Satellite Home)
Viewer Improvement Act of 1999)
)
Broadcast Carriage Issues)
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CS Docket No. 00-96

To: The Commission

COMMENTS OF PAPPAS TELECASTING COMPANIES

Pappas Telecasting Companies (“Pappas”), pursuant to Section 1.405 of the Commission’s Rules, hereby submits its Comments in support of the *Emergency Petition of the National Association of Broadcasters and Association of Local Television Stations to Modify or Clarify Rule* (the “Emergency Petition”).¹

Pappas is presently the sole domestic affiliate of Azteca America, an emerging Spanish-language broadcast television network, and currently broadcasts Azteca America programming on its stations in Los Angeles (KAZA-TV, licensed to Avalon, California), San Francisco-San Jose/ Sacramento-Modesto (KTNC-TV, licensed to Concord, California), and Houston (KAZH-TV, licensed to Baytown, Texas) (collectively, the “Stations”). In accordance with the relevant provisions of the Satellite Home Viewer Improvement Act of 1999 (“SHVIA”), Pappas timely sought mandatory carriage of all of

¹ These Comments are submitted in response to the Commission’s Public Notice entitled “National Association of Broadcasters and Association of Local Television Stations Seek Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers,” CS Docket 00-96 (released January 8, 2002).

the Stations on EchoStar Communications Corporation's Dish Network ("EchoStar"). EchoStar has since announced that it intends to relegate certain local stations, including the Stations, to remote satellites that can not be accessed by current EchoStar subscribers using their existing satellite dish equipment, while placing more "popular" local stations, like the Big Four network affiliates, on its full CONUS satellites which can be readily accessed today without any additional equipment.

Pappas's efforts to attract viewers to the Stations has been significantly impeded by EchoStar's discriminatory practice of relegating the Stations, but not all local stations, to remote satellites which are accessible only to subscribers able and willing to assume the onerous burden of arranging, and perhaps paying for, the installation of additional receiving equipment. Pappas concurs with the conclusions of the National Association of Broadcasters ("NAB") and the Association of Local Television Stations ("ALTV") in the Emergency Petition that EchoStar's practices are inconsistent with the clear intent, if not the letter, of SHVIA, and indeed make a mockery of the Act's "carry-one carry-all" provisions.

In reality, many subscribers – for instance, those in rental properties or multiple dwelling units – might not be permitted to install additional receiving equipment even if they themselves were willing to clutter their residences with additional hardware. Moreover, many EchoStar subscribers are not even aware of the fact that there are local stations which they are entitled to receive – and have in essence paid EchoStar to provide – but which require the installation of additional hardware and perhaps additional expenditures on the subscriber's part. This state of affairs presents particular challenges for the Stations which, having commenced broadcast operations as affiliates of Azteca America only within the last one to six months, are new entrants in the Spanish-language

television market seeking to attract new viewers and gain market share. Even assuming that a subscriber has an awareness and a strong desire to have access to all local stations, such a subscriber would also need to be willing to undertake the laborious process of contacting EchoStar or its local retailer and arranging to have an additional satellite dish installed. In short, only the most knowledgeable and most determined subscriber is likely to bother – a reality probably not lost on EchoStar in devising this scheme.

EchoStar has attempted to shield itself from criticism for this discriminatory practice by making much of its purported commitment to pay at least part, and perhaps even all, of the cost of the required additional equipment and its installation. Even assuming that EchoStar were making a genuine offer to pay for all out-of-pocket costs associated with the installation of the additional dish – which, as explained below, is far from clear – the sheer hassle, inconvenience, and aesthetic costs to consumers of a second dish act as a very strong disincentive. In reality, moreover, EchoStar has made little effort to publicize this “commitment” to its subscribers – both because it has no business incentive to install large numbers of second dishes at its own expense, and because this “commitment” is somewhat illusory. Pappas notes that, at least as of January 18, 2002, *EchoStar’s web site continues to make no mention whatsoever of its purported offer to pay all out-of-pocket costs associated with the additional dish.* Moreover, EchoStar’s December 27, 2001 press release about its plans to offer additional local stations effective January 1, 2002 likewise makes no mention of the purported offer. Finally, as the Emergency Petition points out, the December 27, 2001 letter from EchoStar’s Chief Executive Officer to the President of the NAB refers only to EchoStar’s assuming the cost of the equipment, but not necessarily the installation of the second dish.

Moreover, EchoStar's customer service representatives seem curiously ill-informed about the purported EchoStar offer. Representatives of Pappas have made numerous telephone calls to EchoStar, as well as to its local retailers, in each of the Stations' respective markets, and have received a mixture of incomplete, erroneous and conflicting information about the "offer" as regards the financial responsibility for the second dish. Without exception, EchoStar's customer service representatives failed to volunteer any information about the "offer" to Pappas's representatives who called to inquire about accessing the Stations unless specifically pressed. When explicitly asked whether EchoStar would pay all costs associated with the additional dish, *some* of the EchoStar customer service representatives indicated that EchoStar would bear the cost of the additional equipment and installation, but in most cases they also indicated that it was possible that there would be additional installation costs to be borne by the subscriber, depending upon the circumstances of the particular installation.

When Pappas's representatives called *local retailers* to inquire about the second dish, they were told nothing about EchoStar's offer. Rather, they were advised in one case that a second dish would cost \$100 for equipment and \$69 for installation (Cooper Communications, Brentwood, California), and \$185 for the equipment with installation included in another case (Star Satellite, Danville, California). In both cases, the retailers indicated that they expected a change in EchoStar's policy next month, but they were unsure what the new policy would be. Thus, far from making a concerted effort to educate its subscribers about EchoStar's second dish "offer" and to encourage subscribers to take advantage of it, the evidence seems to suggest that EchoStar may actually be inclined to *deter* its customers from exercising their option to have an additional dish

installed, thereby impeding its customers' right to receive all local stations. In so doing, EchoStar seeks to avoid its statutory obligation to "carry one, carry all."

Such patent discrimination against certain local stations, including the Stations, simply can not be reconciled with the clear intent of Congress in passing SHVIA, which includes a specific provision barring discriminatory treatment of some local stations. 47 U.S.C. S. 338(d). Moreover, as the Emergency Petition points out, Congress intended to "...ensure that satellite carriers *position local stations in a way that is convenient and practically accessible for consumers.*" SHVIA Conference Report, 145 Cong. Rec. H11795 (daily ed. Nov. 9, 1999) (emphasis added). Moreover, the Commission's rule addressing this issue – Section 76.66(i)(4) – seems clearly intended, when read in light of the relevant Commission Orders, to prevent satellite carriers from engaging in cherry-picking of local stations by forcing subscribers to acquire a second dish in order to obtain *some* local stations. It is therefore vital that the Commission clarify its rules to state that satellite carriers may not segregate certain local stations on a satellite that requires subscribers to acquire additional equipment. Second, the Commission should, as the Emergency Petition suggests, mandate an early deadline for compliance with the requirement that it provide one-dish access to all local stations. By doing so, the Commission would give full effect to SHVIA's requirement that *all local stations be practically available to consumers.*

Lastly, Pappas believes that maintaining unfettered access to local broadcast stations on multiple distribution platforms is essential to the continued viability of local television broadcasting. As the Fourth Circuit noted in its opinion confirming the constitutionality of satellite must-carry, mandatory carriage of local broadcast stations is essential to preserving free over-the-air television. *See Satellite Broadcasting and*

Communications Association v. Federal Communications Commission, 2001 U.S. App.

LEXIS 26120, *70 (4th Cir. 2001) (holding that the SHVIA “is a narrowly tailored means of promoting the government’s important ends of preserving a vibrant mix of local broadcast outlets for over-the-air viewers”). Therefore, Pappas urges the Commission to give full effect to SHVIA’s “carry one, carry all” provision, thereby protecting the continued viability of local broadcast outlets for over-the-air viewers, and continued competition in local markets for broadcast television advertising.

Conclusion

As set forth in these Comments, Pappas believes it to be vital that the Commission clarify its rules to prevent discriminatory treatment against some local stations, including Pappas’s Stations, by requiring the installation of additional equipment in order to access those stations.

Respectfully submitted,

PAPPAS TELECASTING COMPANIES

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